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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Nevada)

THE PEOPLE,

Plaintiff and Respondent,

v.

CHARLES JOHN BICKING IV,

Defendant and Appellant.

C081379

(Super. Ct. No. F14000467)

Defendant Charles John Bicking IV was convicted of inflicting corporal injury on his cohabitant, Staci Malone. (Pen. Code, § 273.5, subd. (a).)¹ He contends (1) there was insufficient evidence Staci was his cohabitant; and (2) the trial court erred and violated his Sixth Amendment confrontation rights by admitting Staci's statements to the police. We first conclude there was sufficient evidence of cohabitation. We next conclude any error in admitting Staci's statements was harmless because Staci later testified at trial. Accordingly, we affirm the judgment.

¹ Undesignated statutory references are to the Penal Code.

FACTUAL AND PROCEDURAL BACKGROUND

On September 17, 2014, defendant's neighbor, Suzanne Medsker, heard banging against walls, screaming, and a woman yelling "help" from Staci's apartment that was located above Medsker's. The woman, who Medsker assumed was Staci, also yelled for somebody to "[g]et off of her." Concerned for Staci's safety, Medsker went upstairs, knocked on the door, and demanded to see Staci. When no one responded, Medsker called the police.

The police arrived and knocked on defendant's apartment door. When there was no response, police retrieved the key from the apartment manager and entered. Defendant, who seemed agitated, approached the officers from the back bedroom and asked why they were there. Staci, who was visibly pregnant, was sitting on the side of the bed in the back bedroom that defendant had just exited. Staci was crying and seemed fearful.

One officer took defendant to the balcony to get his statement, while the other spoke with Staci in the living room. Staci told the officer she had been dating defendant for eight months and was pregnant with their child. Staci had redness and scratches on her neck and face, especially her upper lip. Although Staci initially said the altercation was only verbal, she recanted and said, "[i]t was physical." "It's always physical." This time, Staci decided to leave when they started fighting because she feared it might turn physical. She went to the back bedroom to retrieve her purse, but defendant followed her and grabbed her cell phone. He threw the phone on the floor and wrapped his arms around her so she could not move. Defendant then threw Staci onto the bed and positioned his body on top of her. Staci tried to yell for defendant to get off, but he put his hands over her mouth. Staci had trouble breathing and unsuccessfully tried to pull defendant's hands off. When the police knocked on the door, defendant warned Staci to say their altercation was only verbal, with "no physical fight." Staci told police her injuries were from the fight with defendant. She and defendant frequently fought, with

every argument leading to a physical altercation. Staci did not know how to get away from defendant. The police arrested defendant and issued an emergency protective order, based on Staci's request.

Defendant told police he and Staci were living together and she was six months pregnant with his child. Defendant claimed the two were fighting because Staci was using marijuana during the pregnancy. Defendant denied the fight was physical and said, "You know, couples have their problems." After he was arrested, defendant claimed Staci had punched him in the face. Although the officer noticed a cut on defendant's face, it was not consistent with being punched.

That night, Staci called her mother. Her mother knew Staci was living with defendant, who was Staci's boyfriend. Staci was crying and said defendant choked her and hit her in the lip. In addition, defendant threw Staci on the ground, shoved her in a room, and told her to be quiet. Mother told Staci she was concerned for Staci's safety, even with defendant in jail, and Staci agreed. Staci agreed to move out of the apartment the next day, before defendant could get out of jail. With mother's help, Staci moved in with mother on September 18, 2014. Mother noticed Staci's injured lip and bruised neck. At trial, Staci testified she moved back in to her apartment within five days. Staci also testified she never told her mother about the incident.

Defendant was charged with dissuading a witness by force or threat (§ 136.1, subd. (c)(1), count I), false imprisonment by violence (§ 236, count II), and corporal injury to cohabitant (§ 273.5, subd. (a), count III). The trial court denied defendant's pretrial motion to exclude Staci's statements to the police, reasoning they were spontaneous and not testimonial because defendant had not yet been arrested and the emergency was ongoing.

At trial, Staci's statements to the police were admitted into evidence as part of the prosecution's case. During the defendant's case, Staci testified that the day of the incident she argued with defendant about her marijuana use while she was pregnant with

their child. She was upset about the pregnancy and wanted defendant to earn more money. Staci denied defendant hit, threw, or choked her that night, and testified she punched defendant. She testified she lied to police about the abuse because she feared they would smell marijuana on her and take her baby away. In addition, the injuries the police observed and photographed were due to skin problems and not from her fight with defendant. Staci and her son tested positive for marijuana after he was born. Defendant and Staci were living together at the time of trial and Staci referred to defendant as her “husband.”

A jury convicted defendant of corporal injury to a cohabitant (count III). The trial court suspended imposition of sentence and granted defendant four years’ probation. Defendant filed a timely appeal.

DISCUSSION

I

Sufficiency of the Evidence

Defendant contends the evidence was insufficient to establish Staci was his cohabitant or former cohabitant, a required element of section 273.5, subdivision (a). We disagree.

“ ‘When considering a challenge to the sufficiency of the evidence to support a conviction, we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence -- that is, evidence that is reasonable, credible, and of solid value -- from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.’ [Citation.] We determine ‘whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’ [Citation.] In so doing, a reviewing court ‘presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.’ [Citation.]” (*People v. Avila* (2009) 46 Cal.4th 680, 701.) A reviewing court does not reweigh

evidence or reevaluate a witness's credibility. (*People v. Lindberg* (2008) 45 Cal.4th 1, 27.)

Within the meaning of section 273.5, "cohabitation" is unrelated adults "living together in a substantial relationship -- one manifested, minimally, by permanence and sexual or amorous intimacy." (*People v. Holifield* (1988) 205 Cal.App.3d 993, 1000.) Although it is not necessary to prove "a full quasi-marital relationship," cohabitation requires "something more than a platonic, rooming-house arrangement." (*Id.* at pp. 999, 1002.) Factors that may determine cohabitation include, but are not limited to, sexual relations between the parties while sharing the same residence, sharing of income or expenses, joint use or ownership of the property, the parties' holding themselves out as marital partners, the continuity of the relationship, and the length of the relationship. (§ 13700, subd. (b); *Holifield*, at p. 1001.)

Despite defendant's contentions, the record contains strong evidence Staci was defendant's cohabitant. Defendant told police he and Staci were living together and she was pregnant with his child. Defendant acknowledged their romantic relationship when he told police, "couples have their problems." Staci also told police and testified at trial she and defendant had been together for almost a year at the time of the incident. In addition, Staci told police she was pregnant with defendant's child and testified at trial defendant said, "I love you and the baby" during the incident. Staci also testified she was upset at the time of the incident in part because defendant "wasn't making enough money," suggesting they shared expenses. In addition, Staci's mother testified defendant was Staci's boyfriend and lived with Staci. These facts were sufficient to establish defendant and Staci were living together in a substantial relationship that was characterized by permanence and sexual or amorous intimacy. (*People v. Taylor* (2004) 118 Cal.App.4th 11, 19.)

II

Admission of Staci's Statements to the Police

The confrontation clause provides, “ ‘[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him [or her].’ ” (*Crawford v. Washington* (2004) 541 U.S. 36, 42 [158 L.Ed.2d 177].) Traditionally, “[t]estimonial statements of witnesses absent from trial have been admitted only where the declarant is unavailable, and only where the defendant has had a prior opportunity to cross-examine.” (*Id.* at p. 59.) The confrontation clause “does not bar admission of a statement so long as the declarant is present at trial to defend or explain it.” (*Crawford, supra*, 541 U.S. at p. 59, fn. 9.)

To the extent the trial court violated defendant’s Sixth Amendment confrontation rights by admitting Staci’s statements to the police during the prosecution’s case, any error was harmless beyond a reasonable doubt when she testified as a witness for the defense. (*Chapman v. California* (1967) 386 U.S. 18 [17 L.Ed.2d 705]; *People v. Cage* (2007) 40 Cal.4th 965, 991-992.) Staci’s trial testimony gave defendant an opportunity to question her about her statements and ask her to defend or explain them. (Compare *Melendez-Diaz v. Massachusetts* (2009) 557 U.S. 305 [174 L.Ed.2d 314] [finding confrontation clause violation where drug lab result certificates were admitted but declarants did not testify at trial].) Defense counsel asked Staci detailed questions about her encounter with the police, including how many officers questioned her, where they questioned her, whether she was sitting down, how long it took, and whether she cried or became fearful. Staci testified she told the police the altercation was physical because she was afraid they would discover she was smoking marijuana while pregnant and take her child. According to Staci, “I knew [the officer] would believe it. He was waiting for me to tell him something.” When defense counsel asked whether she lied to the police, Staci testified, “I did. I did lie.” During her testimony, Staci also tried to explain the police photos, stating the injuries shown were due to skin problems and not from her fight

with defendant. Accordingly, defendant had the opportunity to examine Staci about her statements to police and any error was harmless.

DISPOSITION

The judgment is affirmed.

_____/s/
HOCH, J.

We concur:

_____/s/
ROBIE, Acting P. J.

_____/s/
DUARTE, J.